

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTOLIN ANDREW MARKS,

Plaintiff,

v.

DEENA GEPHARDT et al.,

Defendants.

Case No. C07-5259RJB

REPORT AND
RECOMMENDATION TO
DENY PLAINTIFF'S
MOTION FOR DEFAULT
AND GIVE DEFENDANTS
TWO WEEKS TO FILE AN
ANSWER

NOTED FOR:

DECEMBER 7, 2007

This Bivens action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Before the court is plaintiff's motion /notice of default (Dkt. # 23). Defendants, through counsel, electronically filed an answer and counter claim in this action on November 9, 2007. The document filed bears another case number and case caption, 06-CV-5675, Marks v Albin, (Dkt. # 24). The filing of this pleading indicates to the court an intention to answer, however, it appears the wrong answer may have been filed.

DISCUSSION

Defendants may be technically in default at this time, however, the filing of an answer on November

1 9, 2007, is an attempt to cure the default. Default judgments are disfavored by the law and cases should be
2 decided on their merits except in extreme cases. Mendoza v. Wight Vineyard Management, 783 F.2d 941,
3 945-46 (9th Cir. 1986). Although the answer in this case is late, defendants should be given an opportunity
4 to cure the default. The motion for default should be **DENIED**. Pursuant to 28 U.S.C. § 636(b)(1) and
5 Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this
6 Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver
7 of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the
8 time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **December 7,**
9 **2007**, as noted in the caption.

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12 DATED this 15 day of November, 2007.

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14 /s/ J. Kelley Arnold
15 J. Kelley Arnold
16 United States Magistrate Judge
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